

DETERMINATION OF CONSISTENCY WITH THE MITIGATED NEGATIVE DECLARATION

Pursuant to Sections 15064 and 15162 of the California Environmental Quality Act (CEQA) Guidelines, the City of San José has determined that the project described below does not involve significant effects, and the project is consistent with the project description analyzed in the Mitigated Negative Declaration (MND) for the Emergency Interim Housing (EIH) Programs (File No. ER22-198) and adopted by City Council Resolution No. RES2023-380 on October 24, 2023. Therefore, the City of San José can act on this project as being within the scope of the EIH Programs MND.

File Number and Project Name: File No. ER24-015, Cerone VTA Yard EIH Project

This EIH project would include installation of 47 single-story modular units containing approximately 200 beds. Communal spaces would include a kitchen, restrooms, showers, and laundry facilities, and outdoor spaces including a pet run and smoking area. The project may include installation of a community garden on-site. Storage facilities for residents would also be provided. Case management and 24-hour security would be provided. In addition to the sleeping units, structures on the site would include one or more communal buildings, storage units, a single guard shack, and an insect eradication shed.¹ All structures would be temporary. This EIH site is expected to be in operation for a maximum of 10 years or less, depending upon need. After operations cease, all structures would be removed and the project site would be returned as much as possible to existing conditions. (See Figure 1 in Attachment A.)

Location: 3990 Zanker Road, San José, CA 95134

Council District: 4

The environmental impacts of this project were addressed in the MND and supporting Initial Study entitled “Emergency Interim Housing Programs Project” that was adopted by City Council Resolution No. RES2023-380 on October 24, 2023. Specifically, the following resource areas were reviewed and found to be adequately considered in the MND:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Aesthetics | <input checked="" type="checkbox"/> Mineral Resources |
| <input checked="" type="checkbox"/> Agriculture and Forestry Resources | <input checked="" type="checkbox"/> Noise and Vibration |
| <input checked="" type="checkbox"/> Air Quality | <input checked="" type="checkbox"/> Population and Housing |
| <input checked="" type="checkbox"/> Biological Resources | <input checked="" type="checkbox"/> Public Services |
| <input checked="" type="checkbox"/> Cultural Resources | <input checked="" type="checkbox"/> Recreation |
| <input checked="" type="checkbox"/> Energy | <input checked="" type="checkbox"/> Transportation |
| <input checked="" type="checkbox"/> Geology and Soils | <input checked="" type="checkbox"/> Utilities and Service Systems |
| <input checked="" type="checkbox"/> Hazards and Hazardous Materials | <input checked="" type="checkbox"/> Wildfire |
| <input checked="" type="checkbox"/> Hydrology and Water Quality | <input checked="" type="checkbox"/> Mandatory Findings |
| <input checked="" type="checkbox"/> Land Use and Planning | |

ANALYSIS:

Consistency with the EIH Programs MND

There are many designs and structures that are used for transitional housing units and the market is rapidly developing to provide various forms of units. The EIH Programs MND analyzed the option with the greatest massing for a conservative analysis of project impacts. For this project, the sleeping cabin units are anticipated

¹ The insect eradication shed will be used to put belongings in to kill bed bugs prior to a person moving into a unit.

to be a mix of single-story modular single units, double units, and ADA accessible units. These units are smaller in mass than the two-story modular units analyzed in the EIH Programs MND. All other aspects of the project in terms of services, access, fencing, and safety features are equivalent or comparable to what was analyzed in the EIH Programs MND.

Site-Specific Resources

Burrowing Owls: The project site is identified in the Santa Clara Valley Habitat Plan (Habitat Plan) as an area subject to burrowing owl surveys. The City performed a burrowing owl survey of the project site in April 2024 and found no indication that burrowing owls were on the site. Furthermore, research into previous surveys of the project site performed over the past ten years showed that burrowing owls were not present on the site. The Habitat Plan requires that for sites within a burrowing owl survey area, burrowing owl surveys be performed during the breeding season and outside the breeding season in addition to a pre-construction survey 48 hours prior to the start of site disturbance. Based on the latest burrowing owl survey and the history of burrowing owls on the site, the City requested a waiver from the Santa Clara Valley Habitat Agency for the non-breeding season survey. The waiver was approved by the Habitat Agency on August 13, 2024. The City will perform a pre-construction survey for burrowing owls 48 hours prior to construction. (See Attachment B.)

Tribal Cultural Resources: The project site is within 1,000 feet of Coyote Creek and is an area of archaeological sensitivity in the City. As requested by the Tamien Nation Tribe, the City consulted with the Tribe regarding this EIH project on July 18, 2024. The Tribe confirmed that known Tribal Cultural Resources are not present on the site. The Tribe concurred with the City's assessment that unknown subsurface resources may exist on the project site, and agreed that inclusion of Mitigation Measures TR-1, TR-2, and TR-3 for the discovery of unknown resources would suffice to ensure that no impacts to Tribal Cultural resources occur. The mitigation measures are outlined below. (See Attachment C.)

Mitigation Measures

A Mitigation Monitoring and Reporting Program (MMRP) was adopted for the EIH Programs MND (See Attachment D). The EIH Programs MMRP identified Mitigation Measures for potential air quality, hydrology and water quality, and tribal cultural resources impacts based on the locations of potential future EIH sites. Due to the location of the proposed project site (not within a designated special hazard flood zone),² mitigation measures related to flooding impacts are not applicable to this proposed project. Mitigation measures for air quality and tribal cultural resource are, however, applicable to the proposed project. The project's potential to impact air quality and tribal cultural resources are discussed below:

Impact Air-1: Future projects located within 1,000 feet of existing sensitive receptors could result in a significant health risk impact from toxic air contaminants during construction. The nearest residences to this project site are the multi-family residences approximately 375 feet southwest of the project site on Zanker Road and the single family residences on Spindrift Place approximately 489 feet west of the project site (See Figure 2 in Attachment A). Therefore, Mitigation Measures AIR-1.1 and AIR-1.2 apply to this project.

In compliance with Mitigation Measure AIR-1.1 and 1.2, a Health Risk Assessment was prepared for the project by Illingworth & Rodkin, Inc. in May 2024. The Health Risk Assessment found that project construction would result in a cancer risk of 0.14 per million, annual PM_{2.5} emissions of <0.01 µg/m³, and a hazard index of <0.01, which are below their respective BAAQMD single-source significance thresholds.³ See Attachment D.

The City also reviewed the project as it relates to City Policy MS-11.1 regarding placing sensitive receptors near sources of pollution. A review of the project area identified two mobile sources (Zanker

² Federal Emergency Management Agency. Flood Insurance Rate Map 06085C0066J. February 19, 2024.

³ BAAQMD single-source thresholds are >10.0 per million for cancer risk, >0.3 µg/m³ for annual PM_{2.5} emissions, and >1.0 for hazard index.

Road and Tasman Drive) and two stationary sources (generators at the office building located at 3850 Zanker Road approximately 600 feet southeast of the project site and the Santa Clara Valley Transportation Authority Cerone Yard bus depot on the project site north of the proposed area of work) of toxic air contaminants (TACs) within 1,000 feet of the project site that could effect future residents at the project site. Due to the distance between these TAC sources and the project site, as well as the direction of prevailing winds, the cancer risk, maximum annual PM_{2.5} concentration, and Hazard Index values would not exceed the BAAQMD single or cumulative source health risk thresholds at the project site, as shown in Table 1 below.

Table 1: Summary of Health Risks to On-site Sensitive Receptors

Source	Cancer Risk (per million)	Annual PM _{2.5} (µg/m ³)	Hazard Index
Zanker Road	0.69	0.07	<0.01
Tasman Drive	0.22	0.01	<0.01
Santa Clara Valley Transportation Authority (Facility ID #4558, Bus Transportation)	-	<0.01	-
VTA Cerone Yard Bus Activity	0.45	<0.01	<0.01
<i>BAAQMD Single-Source Threshold</i>	<i>10</i>	<i>0.3</i>	<i>1.0</i>
Exceed Threshold?	No	No	No
Combined Sources	1.95	<0.11	<0.04
<i>BAAQMD Cumulative Source Threshold</i>	<i>100</i>	<i>0.8</i>	<i>10.0</i>
Exceed Threshold?	No	No	No
Source: Illingworth & Rodkin, Inc. 3990 Zanker Road Tiny Homes Health Risk Assessment. May 31, 2024.			

Based on the analysis in the Health Risk Assessment as summarized above, no further action on Mitigation Measures AIR-1.1 and AIR-1.2 are required.

Impact TCR-1: Construction of EIH projects within one mile of a creek, or 1,000 feet of a known Tribal Cultural Resource, could result in significant impacts to unknown Tribal Cultural Resources from ground disturbing activities. The project site is located approximately 800 feet west of Coyote Creek (refer to Figure 2 in Exhibit 3) and is in an archaeologically sensitive area. Therefore, Mitigation Measure TCR-1.1 would apply to this project. Mitigation Measure TCR-1.1 requires that, for EIH project sites within 1,000 feet of a creek, the City consult with Tribes that have a traditional or cultural affiliation with San José, and have requested consultation under AB52.

As discussed above under *Site Specific Resources, Tribal Cultural Resources* above, the City consulted with Tamien Nation and it was agreed that the following mitigation measures would be implemented for the project.

Mitigation Measure TR-1: Tribal Cultural Resources Awareness Training.

Prior to issuance of any demolition or grading permits, whichever occurs first, the City shall be required to submit evidence that Cultural Awareness Training has been provided to construction personnel prior to ground disturbance. The training shall be facilitated by a qualified project archaeologist in collaboration with a Native American representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3. Documentation verifying that Cultural

Awareness Training has been conducted shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.

Mitigation Measure TR-2: Native American Monitoring.

A qualified Native American Monitor, registered with the Native American Heritage Commission (NAHC) for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3, in Mitigation Measure TR-1: Tribal Cultural Resources Awareness Training, shall be engaged to be present during all ground disturbing activities.

Mitigation Measure TR-3: Notification of Finds.

If tribal cultural resources are encountered during ground disturbance of the site, the City shall notify the Tribes who have requested consultation on this project of the discovery.

The project will also be subject to the Standard Permit Conditions identified in the EIH Program MND (See Attachment D).

There would be no new significant environmental impacts that would result from this project pursuant to CEQA Guidelines 15162. No further analysis under CEQA is required.

CHRISTOPHER BURTON, Director
Planning, Building and Code Enforcement



Deputy

Date 8/30/24

Environmental Project Manager: Reema Mahamood

Attachments:

- Attachment A – Site Location Map and Site Layout
- Attachment B – Burrowing Owl Survey Report and SCVHA Condition 11 Waiver
- Attachment C – Mitigation Monitoring and Report Program
- Attachment D – Standard Permit Conditions

ATTACHMENT A
SITE LOCATION MAP AND SITE LAYOUT

Cerone Unit Breakdown

45 Single Modules = 90 beds
45 Double Modules = 90 beds
20 Accessible Modules = 20 beds

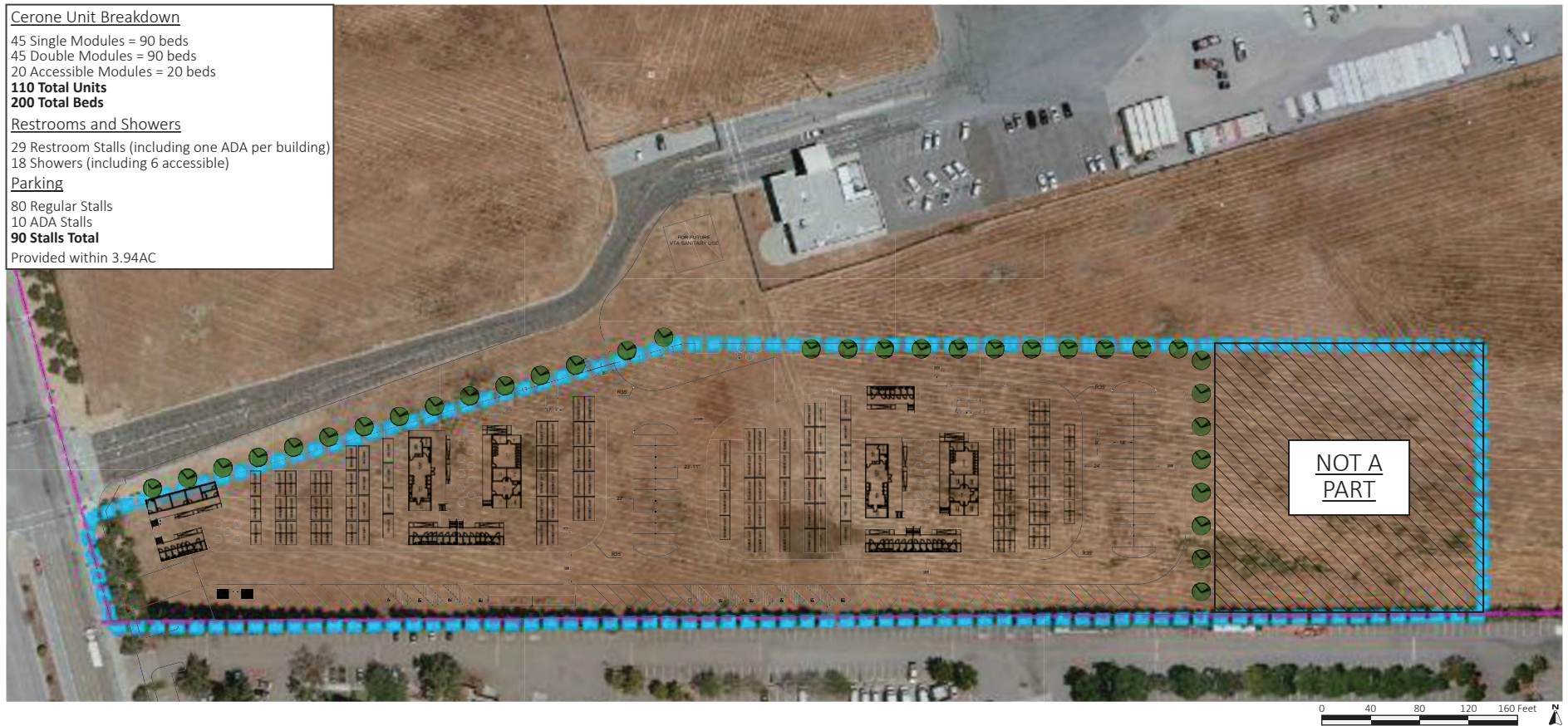
110 Total Units
200 Total Beds

Restrooms and Showers

29 Restroom Stalls (including one ADA per building)
18 Showers (including 6 accessible)

Parking

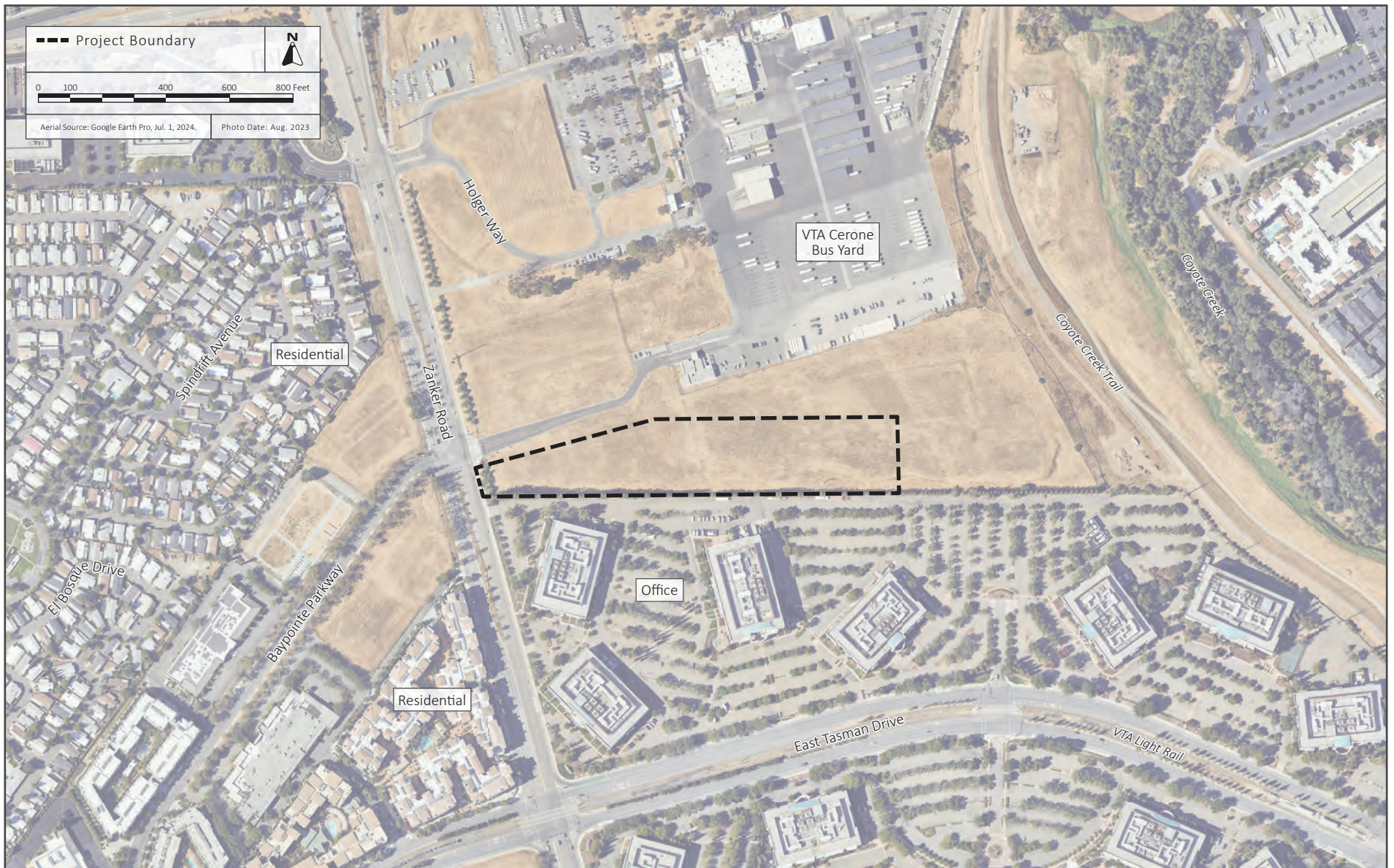
80 Regular Stalls
10 ADA Stalls
90 Stalls Total
Provided within 3.94AC



Source: City of San José, March 15, 2024.

CONCEPTUAL SITE PLAN

FIGURE 1



AERIAL PHOTO OF PROJECT SITE AND SURROUNDING LAND USES

FIGURE 2

ATTACHMENT B
BURROWING OWL SURVEY REPORT AND SCVHA CONDITION 11 WAIVER

From: [Gerry Haas](#)
To: [Mahamood, Reema](#)
Cc: [Keyon, David](#); [Hitchens, Cort](#)
Subject: RE: ER24-015 Cerone VTA Yard EIH Site - HCP Waiver Request
Date: Tuesday, August 13, 2024 9:15:54 AM

[External Email]

Hello Reema,

The Habitat Agency concurs with the conclusion in this memo that a non-breeding season survey is not required for this project. With the final pre-construction surveys, this project would be consistent with Condition 15 of the Habitat Plan.

Regards,

Gerry Haas

Principal Planner | Santa Clara Valley Habitat Agency | gerry.haas@scv-habitatagency.org

Office: 669.253.6127 | Mobile: 530.401.0721

From: Mahamood, Reema <reema.mahamood@sanjoseca.gov>
Sent: Wednesday, August 7, 2024 8:58 AM
To: Gerry Haas <gerry.haas@scv-habitatagency.org>
Cc: Keyon, David <david.keyon@sanjoseca.gov>; Hitchens, Cort <Cort.Hitchens@sanjoseca.gov>
Subject: ER24-015 Cerone VTA Yard EIH Site - HCP Waiver Request

Hello Gerry,

Please see attached Condition 11 Waiver Request.

Please can you let us know the estimated schedule for when the Habitat Agency would be able to review and provide a response?

Thank you!

Reema

Reema Mahamood
Planner III, Environmental Review

City of San José | Planning, Building & Code Enforcement
200 E. Santa Clara St., T-3

Memorandum

Date: August 7, 2024
To: Habitat Plan Agency
From: Reema Mahamood, Planning Division, City of San José
Subject: Cerone VTA Yard Emergency Interim Housing (EIH) Project - Waiver request

REQUEST

Accept the request to waive the Nonbreeding Season Burrowing Owl Survey Requirement per Habitat Plan Condition 15.

CONDITION 15

Habitat Plan Condition 15 requires burrowing owl habitat surveys in all modeled occupied nesting habitat in the Habitat Plan. The 2012 Habitat Plan included the Cerone VTA Yard EIH site in the modeled nesting habitat for the burrowing owl. Per Condition 15, habitat surveys in occupied nesting habitat are required during both the breeding season (February 1 through August 31) and nonbreeding season (September 1 through January 31).

PROJECT LOCATION

The proposed project site is an undeveloped, approximately 3.9-acre area located in the City of San José (City), at 3990 Zanker Road. The site is approximately 1,000 feet from Coyote Creek. See Figure 1, Site Location Map below.

PROJECT DESCRIPTION

The City would develop the project site for emergency interim housing (EIH) which would be used to house currently unhoused persons with the ultimate goal of transitioning them into permanent housing.

The City would install 47 single-story modular units for a total of 120 beds. There would be 45 single modular units, 45 double modular units, and 20 Americans with Disabilities Act (ADA) accessible modules. The total number of residential units will be 96. Additionally, the site would include several one-story common use modular buildings which would include shared facilities such as kitchens, laundry, restrooms, private case management rooms, and storage units. The site would also be developed with small picnic/gathering outdoor spaces. Parking spaces for vehicles would also be provided on the site. The site would be fenced and gated, and the Site Operator would be responsible for controlling ingress and egress and ensuring the security of the premises. See Figure 2, Conceptual Site Layout below.

The City would hire a Site Operator to manage and maintain the site. The Site Operator would be responsible for providing services such as career counseling, financial literacy, health care referrals, substance abuse counseling and behavioral health support to the residents during their stay in the EIH site. The Site Operator would have staff on site 24 hours a day, seven days a week, and would be responsible for securing the site.

Unhoused individuals who participate in the housing program at this EIH site are engaged on an ongoing basis with the goal of helping them transition into permanent housing within twelve months.

Existing Site Conditions and Site Access

The project site consists of ruderal grassland habitat, dominated by nonnative grass species such as wild oats. No structures are present on the site, and the only trees are located along the southern boundary. The fence running north to south in the middle of the site is a three-foot-tall barbed-wire cattle fence which has an opening where cars can drive through, and there is no gate. The only other fence is along the southern border of the work boundary, separating the neighboring parking lot from the VTA property, but the entire site is perfectly accessible from the north with no fences. See Figure 3, Site Photographs below.

Santa Clara Valley Habitat Plan

The Santa Clara Valley Habitat Plan Geobrowser database shows the project site as Agricultural and Valley Floor Lands (Fee Zone B), and Western Burrowing Owl wildlife survey area. See Geobrowser Area Report below.

Condition 15 requires burrowing owl habitat surveys in all modeled occupied nesting habitat in the Habitat Plan, the modeled nesting habitat depicted in the 2012 Habitat Plan included the project site. Per Condition 15, habitat surveys in occupied nesting habitat are required during both the breeding season (February 1 through August 31) and nonbreeding season (September 1 through January 31).

FINDINGS

The following factors have been considered in the City's request for a waiver from conducting the Nonbreeding Season Burrowing Owl Survey Requirement per Habitat Plan Condition 15.

1. Burrowing owls were known to occur on the southern portion of the parcel, including or at least close to the project site, from the 1990s through 2010. Surveys by H. T. Harvey in 2013, 2014, and 2015 did not detect burrowing owls at the project site. The Santa Clara Valley Habitat Agency has conducted burrowing owl surveys throughout the Habitat Plan permit area for years and included the project site in its survey area through 2018 or 2019. Those surveys did not detect burrowing owls later than 2010, and because owls seemed to no longer occur on the site, the Habitat Agency has not included the project site in its surveys since 2020. Thus, there is no evidence that burrowing owls have attempted breeding, or otherwise been recorded, at the project site since 2010.
2. Surveys of the project site conducted on April 16 and 18, 2024 (see H.T. Harvey Habitat Survey Report below), did not detect any burrowing owls or signs of owl occupancy. No burrows suitable for use by owls are present on the project site itself, but approximately 20 burrows are present

within the surrounding 250-foot survey area, across the Cerone facility's entrance road from the project site.

Based on the above, there is no evidence that burrowing owls have attempted breeding, or otherwise been recorded, at the project site since 2010. Further, the project site is not included as a Burrowing Owl Fee Zone on the Habitat Agency's Geobrowser. Thus, a nonbreeding-season habitat survey should not be necessary for the project site because burrowing owls have not been detected on this site in years, and the site is not considered "occupied nesting habitat".

Condition 15 acknowledges that areas providing occupied nesting habitat may change during the Habitat Plan's permit term, such as on page 6-62 of the Habitat Plan:

Surveys are not required in sites that are mapped as potential burrowing owl nesting or only overwintering habitat. Modeled habitat types may change throughout the permit term based on the best available scientific data. For example, the Implementing Entity will be conducting annual surveys or collecting annual survey data of other organizations in occupied nesting habitat throughout the permit area to determine the annual status of known nesting areas the number of adult breeding owls present.

The City will conduct preconstruction surveys per Condition 15 protocols just prior to the start of construction to ensure that no owls are present when construction begins.

Benefits of the Project

The implementation of the project would provide units of indoor housing and supportive services to enable currently unhoused people to relocate to the site. Because many currently unhoused people are located near the City's many creeks and rivers, relocation of these unhoused people would lessen environmental degradation and pollutants along the creeks and rivers. It would also remove pets belonging to the unhoused people that could destroy habitat and small riparian wildlife. This project provides both a person-centered, humane, and dignified housing option with support services, and protects essential environmental resources.

Project Impacts

There are no sensitive species on the project site. There are no trees on the project site that would need to be removed, so there would be no impact to the tree canopy in the City.

CONCLUSION

Based on the above, the proposed Project does not preclude achieving the biological goals and objectives of the Habitat Plan or conflict with other applicable requirements of the Habitat Plan and local policies.

Attachments:

- Figure 1 – Site Location Map
- Figure 2 – Conceptual Site Layout
- Figure 3 – Site Photographs
- Geobrowser Area Report
- H.T. Harvey Habitat Survey Report



FIGURE 1 - SITE LOCATION MAP



Cerone Project Site
Site Evaluation

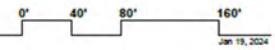


FIGURE 2 – CONCEPTUAL SITE LAYOUT



FIGURE 3 – SITE PHOTOGRAPHS



FIGURE 3 – SITE PHOTOGRAPHS (continued)



Geobrowser Analysis Report

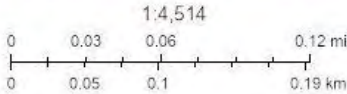
Area of Interest (AOI) Information

Area : 32.2 acres

Aug 6 2024 10:15:05 Pacific Daylight Time



- Santa Clara County Parcels
- HCP Permit Area Poly



Esri Community Maps Contributors, City of San Jose, County of Santa Clara, California State Parks, & OpenStreetMap, Microsoft, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, U.S. Census Bureau, USDA, USFWS, Sanborn Map Company, Maxar

Summary

Name	Count	Area(acres)	Length(ft)
HCP Permit Area Poly	1	32.20	N/A
Agency Reserves	0	0	N/A
Private Development Coverage Areas	1	32.20	N/A
Land Cover	2	32.20	N/A
Land Cover Fee Zones	2	32.20	N/A
Burrowing Owl Fee Zones	0	0	N/A
Wetland Fee Zones	0	0	N/A
Potential Serpentine Fee Zones	0	0	N/A
Plant Survey Areas	0	0	N/A
Wildlife Survey Areas	1	27.13	N/A
Category 1 Streams	0	N/A	0
Category 1 Stream Buffers	0	0	N/A
Valley and Blue Oak Woodlands	0	0	N/A
Urban Reserve System Interface Zones	0	0	N/A

HCP Permit Area Poly

#	HCP Permit Area	Area(acres)
1	Yes	32.20

Private Development Coverage Areas

#	Zone	Area(acres)
1	Urban Development Equal to or Greater Than Two Acres Covered	32.20

Land Cover

#	Land Cover	Area(acres)
1	Urban - Suburban	6.57
2	Golf Courses / Urban Parks	25.63

Land Cover Fee Zones

#	classification	Area(acres)
1	Urban Areas (No Land Cover Fee)	6.57
2	Fee Zone B (Agricultural and Valley Floor Lands)	25.63

Wildlife Survey Areas

#	Species	Area(acres)
1	Western Burrowing Owl	27.13



H. T. HARVEY & ASSOCIATES

Ecological Consultants

50 years of field notes, exploration, and excellence

April 19, 2024

Carolyn Mogollon, AICP
David J. Powers & Associates, Inc.
1871 The Alameda, Suite 200
San José, CA 95126

Subject: Cerone Housing Project – Burrowing Owl Habitat Survey Report and Summary of Project Consistency with Required Setbacks (HTH #4835-01)

Dear Carolyn Mogollon:

Per your request, H. T. Harvey & Associates has conducted surveys for burrowing owls (*Athene cunicularia*) and assessed consistency with required riparian setbacks in support of the Cerone Housing project located at the Santa Clara Valley Transportation Authority's Cerone Bus Division at 3990 Zanker Road in San José, California. It is our understanding that the proposed project consists of constructing 110 Units to provide a total of 200 beds, 29 restroom stalls, 18 showers, and 98 parking stalls on the approximately 3.9-acre undeveloped project site. We further understand that the project is covered under the Santa Clara Valley Habitat Plan (VHP), that the site falls within an area mapped as a Burrowing Owl Survey Area by the VHP, and that the site is located west of Coyote Creek. To support the project's VHP Application and provide advance notice of any potential constraints related to the presence of burrowing owls, we conducted habitat surveys for burrowing owls in compliance with the *Western Burrowing Owl Habitat Survey* requirement in Condition 15 of the VHP, and presence/absence surveys for individual owls and nests. In addition, as documentation of project compliance with Condition 11, we assessed the project's consistency with VHP-required riparian setbacks related to Coyote Creek.

Condition 15 Burrowing Owl Habitat Survey

Condition 15 requires habitat surveys to be completed during both the owls' breeding season (February 1–August 31) and nonbreeding season (September 1–January 31) to identify suitable habitat for burrowing owls and document evidence of owl presence or absence. Condition 15 also requires mapping of all areas on and within 250 feet of the project footprint that support burrows potentially suitable for use by burrowing owls (i.e., burrows of California ground squirrels [*Otospermophilus beecheyi*] and all burrows that may be occupied by burrowing owls (as indicated by evidence of recent owl presence [e.g., tracks, feathers, egg shell fragments, pellets, prey remains, or excrement], if any) during these surveys.

Survey Methods

H. T. Harvey & Associates wildlife ecologist Zachary Hampson, B.A., conducted burrowing owl habitat surveys of the improvement areas during the breeding season on April 16 and 18, 2024. Zachary is an ornithologist with a B.A. in Environmental Studies from the University of California, Santa Cruz. He has conducted hundreds of hours of burrowing owl surveys on H. T. Harvey & Associates projects over the past several years. Zachary has observed many burrowing owls in the field including nesting pairs, chicks, and individual wintering, roosting and foraging owls. He has also detected active owl burrows with owl sign (pellets, whitewash, and feathers), and spent many hours in the field monitoring the behavior of burrowing owls. Thus, Zachary is well qualified to conduct this survey.

The surveys were conducted per the methodologies provided in Condition 15 of the VHP. During the surveys, Zachary walked transects throughout the improvement areas and all potential habitat areas within 250 feet, as access allowed, looking for owls and evidence of recent owl presence at burrows (e.g., whitewash, pellets, feathers, and/or prey remains). Transects were spaced no more than 30 feet apart, and varied in width to account for changes in terrain and vegetation.

Survey Results and History of Burrowing Owl Occurrence on the Site

Zachary did not observe any burrowing owls or signs of owl occupancy at burrows during the breeding-season survey. The locations of burrows of California ground squirrels that were observed during the two surveys, and that may be suitable for occupation by owls, are provided on Figure 1. No burrows suitable for use by owls are present on the project site itself, but approximately 20 burrows are present within the surrounding 250-foot survey area, across the Cerone facility's entrance road from the project site. Vegetation on the entire project site and in surrounding areas is currently very tall and dense, and thus conditions on the site are poor for burrowing owls. If the site is mown prior to the start of construction, habitat conditions will improve.

Burrowing owls were known to occur on the southern portion of the Cerone site, including or at least close to the Cerone Housing Project site, from the 1990s through 2010. Surveys by H. T. Harvey in 2013, 2014, and 2015 did not detect burrowing owls at Cerone. The Santa Clara Valley Habitat Agency (VHA) has conducted burrowing owl surveys throughout the VHP permit area for years, and included the Cerone site in its survey area through 2018 or 2019. Those VHA surveys did not detect burrowing owls later than 2010, and because owls seemed to no longer occur on the site, the VHA has not included Cerone in its surveys since 2020. Thus, there is no evidence that burrowing owls have attempted breeding, or otherwise been recorded, at Cerone since 2010.

Summary of Additional Requirements

Because the project site is located within the Burrowing Owl Survey Area for the VHP, the project is subject to VHP Condition 15, which requires an additional burrowing owl habitat survey to be performed during the nonbreeding season (i.e., September 1 to January 31), and that the results of both the breeding and nonbreeding-season surveys be submitted with the project's VHP application. However, given that there is no evidence that the project site has been occupied by burrowing owls since 2010, it is possible that the VHA may waive the requirement for nonbreeding-season habitat surveys. We recommend that the City make this request of the VHA.

Under Condition 15, a preconstruction survey for burrowing owls will need to be conducted just prior to the start of construction to ensure that impacts on owls and active nests are avoided. A minimum of two surveys, one conducted up to 14 days prior to construction and the second conducted 2 days prior to construction, will be necessary to determine whether owls are present or absent prior to construction. As noted above, mowing would enhance habitat conditions for burrowing owls relative to conditions present during our survey, so if mowing can be avoided between now and the start of construction, that would minimize the potential for owls to colonize the site and constrain the project.

In the event that any owls are found during the preconstruction survey, the project would need to avoid impacts on individual burrowing owls, including nests with eggs and young by implementing a 250-foot non-disturbance buffer around all occupied owl burrows. If construction activities will occur outside this buffer during the breeding season, the applicant will develop an avoidance, minimization, and monitoring plan, containing the measures required by the VHP pertaining to monitoring of the owls' behavior before and during construction, for review by the Santa Clara Valley Habitat Agency and the wildlife agencies prior to construction. During the nonbreeding season, construction activities may proceed and the owl burrow removed if a qualified biologist determines that the owls are gone for at least one week. If owls remain on the site during the nonbreeding season, and the applicant wishes to perform construction activities outside the 250-foot buffer, then the measures described in the VHP pertaining to monitoring of the owls' behavior before and during construction will be implemented.

According to the VHP, passive relocation of burrowing owls would not be allowed until the positive growth trend described in Section 5.4.6 of the VHP is achieved. However, the VHP includes a process by which an applicant can request an exemption to this prohibition if the project could not proceed due to the avoidance measures required by the VHP. If owls are found on the site during pre-construction surveys, and their persistence on the site precludes construction of the project, the applicant may apply for such an exception through the City of San José.

Summary of Project Consistency with Condition 11

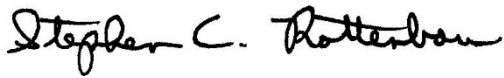
Condition 11 applies to covered projects that may affect streams and associated riparian vegetation within the VHP plan area. This condition requires new covered projects to adhere to setbacks from creeks and streams and associated riparian vegetation to minimize and avoid impacts on aquatic and riparian land cover types, covered species, and wildlife corridors. The standard required setback for Coyote Creek (a Category 1 stream) is 100 feet from the top of bank or 35 feet from the outer edge of the riparian canopy, whichever is greater. The VHP setback along the reach of Coyote Creek east of the project site is 100 feet from top of bank because the slope of the project site is, on average, less than 30%, no areas 35 feet from the edge of riparian vegetation extend past the 100-foot buffer, and the project site is located inside the VHP-designated urban service area.

Because the project will impact land cover types (California annual grassland), the project is considered covered under the VHP, and Condition 11 applies to the project. The project site is located approximately 830 feet west of the top of bank of Coyote Creek, and therefore does not fall within the VHP setback. Thus, the project site falls

entirely outside of the 100-foot setback along Coyote Creek, and is therefore consistent with requirements of VHP Condition 11.

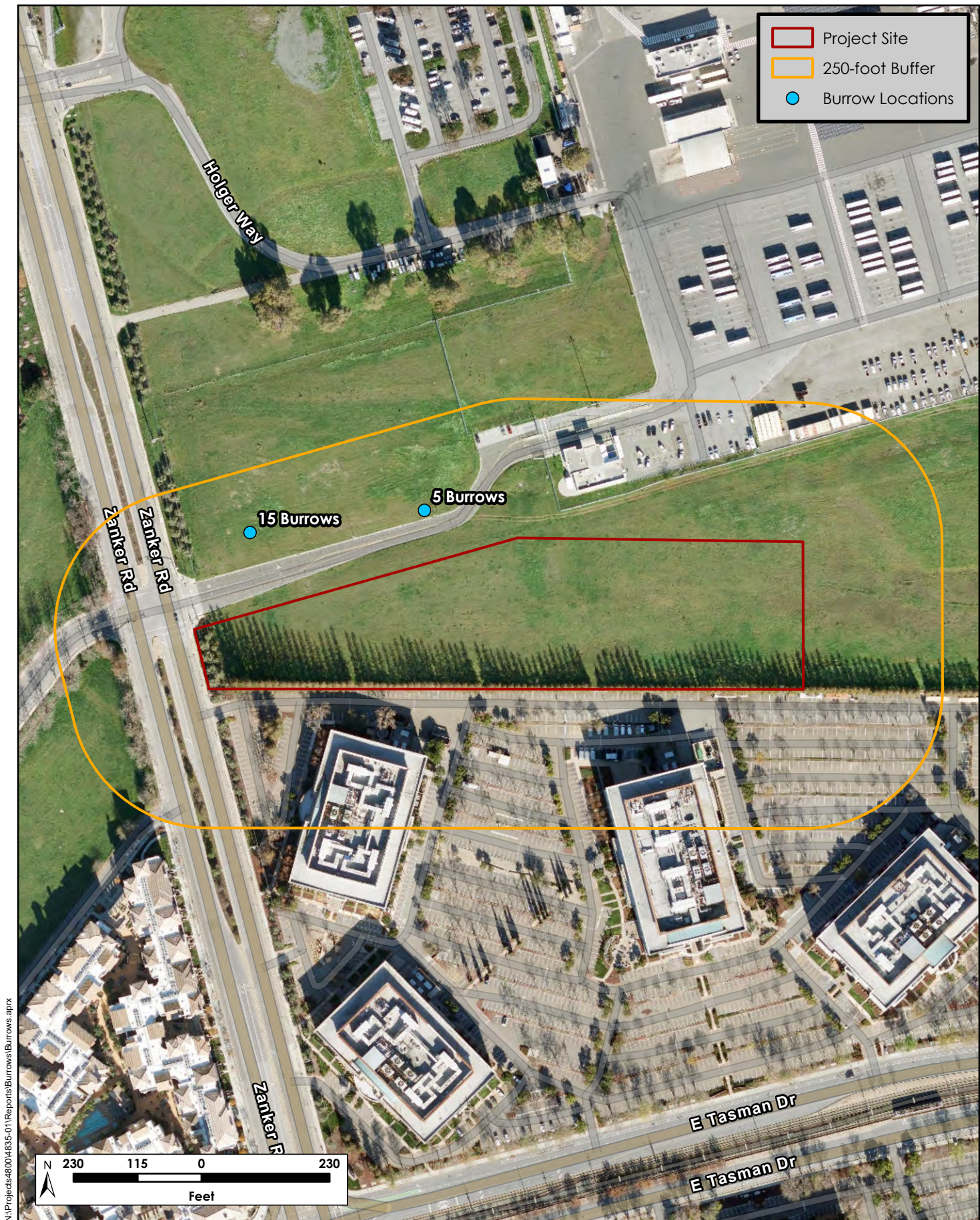
Please feel free to contact me at srottenborn@harveyecology.com or (408) 722-0931 if you have any questions about the survey results. Thanks very much for contacting us regarding this project.

Sincerely,

A handwritten signature in black ink that reads "Stephen C. Rottenborn". The signature is written in a cursive, flowing style.

Stephen C. Rottenborn, Ph.D.
Principal/Project Manager

Attachment: Figure 1. Map of Ground Squirrel Burrows



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H. T. HARVEY & ASSOCIATES
Ecological Consultants

Figure 1. Map of Ground Squirrel Burrows
Cerone Housing Project Burrowing Owl Habitat Survey (4835-01)
April 2024

ATTACHMENT C
MITIGATION MONITORING AND REPORT PROGRAM

MITIGATION MONITORING AND REPORTING PROGRAM

Emergency Interim Housing Programs Project

File No. ER22-198

September 2023



PREFACE

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program (MMRP) whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Initial Study/Mitigated Negative Declaration (IS/MND) prepared for the Emergency Interim Housing Programs Project concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This MMRP addresses those measures in terms of how and when they will be implemented.

The mitigation measures enumerated in this document would reduce the level of impact of potential environmental effects of the proposed action. In all cases, these mitigation measures would reduce the impact of effects determined to be significant prior to mitigation to less-than-significant levels.

This document does *not* discuss those subjects for which the IS/MND concluded that the impacts from implementation of the project would be less than significant.

The City of San José hereby agrees to fully implement the mitigation measures described below, which have been developed in conjunction with the preparation of an IS/MND for the Project. The City understands that these mitigation measures, or substantially similar measures, will be adopted as conditions of approval to avoid or significantly reduce potential environmental impacts to less than significant levels.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Implementation Actions		Compliance Reporting		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
AIR QUALITY					
Impact AIR-1: Future projects located within 1,000 feet of existing sensitive receptors could result in a significant health risk impact from toxic air contaminants during construction.					
MM AIR-1.1: Emergency Interim Housing (EIH) projects proposing development within 1,000 feet of existing sensitive receptors as defined by the Bay Area Air Quality Management District (BAAQMD) shall have a qualified air quality consultant prepare a site-specific construction and operational health risk assessment (HRA). If the HRA demonstrates that the health risk exposures for adjacent sensitive receptors will be less than the BAAQMD project-level thresholds, no additional mitigation is necessary.	A qualified air quality consultant shall prepare a construction and operational HRA as described in MM AIR-1.1. The HRA will be submitted to the City for review.	Prior to any tree removal, grading, demolition, and/or building activity.	Director of Planning, Building and Code Enforcement or Director's designee.	Review and approve the HRA.	Prior to any tree removal, grading, demolition, and/or building activity.
MM AIR-1.2: If the HRA demonstrates that the health risk exposures for adjacent receptors will be above BAAQMD project-level thresholds, projects shall implement the following measures during all phases of construction: <ul style="list-style-type: none"> Use Tier 4 engines for all off-road equipment greater than 50 horsepower and operating for more 	The City shall implement the measures described in MM AIR-1.2 during all phases of construction. Measures shall be printed on all construction documents, contracts, and project plans.	During all phases of construction.	Director of Planning, Building and Code Enforcement or Director's designee.	Ensure that all appropriate measures identified in the HRA to reduce emissions below the thresholds are printed on all	During all phases of construction.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Implementation Actions		Compliance Reporting		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<p>than 20 total hours over the entire duration of construction activities.</p> <ul style="list-style-type: none"> Implement fugitive dust best management practices (as outlined in the Standard Permit Conditions) and, if necessary, enhanced dust control measures recommended by BAAQMD. The need for enhanced measures shall be determined by the findings in the HRA. <p>Use portable electrical equipment where commercially available and practicable to complete construction. Construction contractors shall utilize electrical grid power instead of diesel generators when (1) grid power is available at the construction site; (2) when construction of temporary power lines is not necessary to provide power to portions of the site distant from existing utility lines; and (3) when use of portable extension lines is practicable given construction safety and operational limitations.</p>				construction documents, contracts, and project plans.	
HYDROLOGY AND WATER QUALITY					
Impact HYD-1: Construction of EIH projects within Special Flood Hazard Areas or in proximity to waterways could increase the risk of project inundation.					

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Implementation Actions		Compliance Reporting		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
MM HYD-1.1: EIH projects located within 100-year and 500-year floodplains (Federal Emergency Management Agency [FEMA] Zone AE, A, AH, or AO) shall have the first finished floor of all proposed structures raised above the base flood elevation consistent with the requirements of the Municipal Code (Floodplain Ordinance 17.08) and General Plan policies EC-5.1 and IN-3.7.	The City shall implement measure MM HYD-1.1 during the development review process and during construction. Measures shall be printed on all construction documents, contracts, and project plans.	Prior to any tree removal, grading, demolition, and/or building activity	Director of Planning, Building and Code Enforcement or Director's Designee.	Review and approve design plans.	Prior to any tree removal, grading, demolition, and/or building activity.
TRIBAL CULTURAL RESOURCES					
Impact TCR-1: Construction of EIH projects within one mile of a creek, or 1,000 feet of a known Tribal Cultural Resource, could result in significant impacts to unknown Tribal Cultural Resources from ground disturbing activities.					
MM TCR-1.1: Upon identification of an EIH site, the City shall notify tribal representatives of Tribes with a traditional or cultural affiliation in the City of San José who have requested consultation under AB 52. Notification shall be made via electronic mail, and such notification shall include a site address, Assessor's Parcel Number(s), a location map, and conceptual site plan (if available). The notification shall also include information on proposed grading and trenching. Tribal representatives will have 30 days from the date of the notice to respond and request consultation and/or additional mitigation measures depending on the	Once future project sites are identified the City shall notify tribal representatives as described in MM TCR-1.1. If the additional mitigation measures are required, the City shall prepare an ARTP, provide at least one cultural sensitivity training to construction personnel prior to the initial ground-	During the development review process. For additional mitigation required, during construction.	Director of Planning, Building and Code Enforcement or Director's Designee.	Notify tribal representatives of development once future project sites are identified.	During the development review process. For additional mitigation required, during construction.

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Implementation Actions		Compliance Reporting		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<p>characteristics of the site and the project. Additional mitigation measures may include, but are not limited to, the following:</p> <ul style="list-style-type: none"> • Preparation of an Archaeological Research Treatment Plan (ARTP), which will include guidelines if resources are discovered during site construction. • Conducting a cultural sensitivity training for construction workers in coordination with a Native American Tribal representative from a Tribe with a traditional or cultural affiliation in the City of San José and registered with the Native American Heritage Commission (NAHC). • Engagement of a Native American Tribal Monitor from a Tribe with a traditional or cultural affiliation in the City of San José and registered with the NAHC to be present during ground disturbing activities. • Engagement of an archaeological monitor to be present during ground disturbing activities. 	<p>breaking activities with a qualified Native American Tribal representative, and engage with tribal representatives and/or archaeological monitor to be present during ground disturbing activities, as described in MM TCR-1.1.</p> <p>The ARTP and evidence of the cultural sensitivity training shall be submitted to the Director of Planning, Building and Code Enforcement or Director's Designee.</p> <p>Measures shall be printed on all construction documents, contracts, and project plans.</p>				

Source: City of San José. *Emergency Interim Housing Programs Initial Study*. June 2023.

ATTACHMENT D
STANDARD PERMIT CONDITIONS

**EMERGENCY INTERIM HOUSING PROGRAMS MITIGATED NEGATIVE
DECLARATION
(PLANNING FILE NO. ER22-198)**

STANDARD PERMIT CONDITIONS FOR ALL EIH PROGRAMS

Standard Permit Conditions:

Construction Emissions:

- The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:
 - Water active construction areas at least twice daily or as often as needed to control dust emissions.
 - Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
 - Remove visible mud or dirt track-out onto adjacent public roads using wet-power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
 - Pave new or improved roadways, driveways, sidewalks as soon as possible.
 - Lay building pads as soon as possible after grading unless seeding or soil binders are used.
 - Limit all vehicle speeds on unpaved roads to 15 mph.
 - Replant vegetation in disturbed areas as quickly as possible.
 - Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
 - Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling times to 5 minutes (as required by the California airborne toxics control measure Title 13 Section 2485 of the California Code of Regulations). Provide clear signage for construction workers at all access points.
 - Maintain and properly tune construction equipment in accordance with manufacturer's specifications. A certified mechanic shall check all equipment prior to operation to determine that equipment is in proper operating condition.
 - Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.
- **Nesting Birds.** Construction shall be scheduled to avoid the nesting season (February 1 to August 31). If it is not feasible to schedule construction between September 1 and January 31, pre-construction nesting bird surveys shall be completed prior to tree removal or construction activities in order to avoid impacts to nesting birds. Surveys shall be completed by a qualified biologist no more than 14 days before demolition or

construction activities begin. During the survey, the biologist or ornithologist shall inspect all trees and other nesting habitats in an immediately adjacent to the construction area for nests.

If an active nest is found in an area that would be disturbed by construction, the ornithologist shall designate an adequate buffer zone to be established around the nest, in consultation with the California Department of Fish and Wildlife (CDFW). The buffer would ensure that nests shall not be disturbed during project construction. The no-disturbance buffer shall remain in place until the biologist determines the nest is no longer active or the nesting season ends. If construction ceases for seven days or more then resumes again during the nesting season, an additional survey would be necessary to avoid impacts on active bird nests that may be present.

The applicant shall submit a report indicating the results of the survey and any designated buffer zones to the Director of Planning, Building and Code Enforcement prior to construction.

- **Santa Clara Valley Habitat Plan.** The project may be subject to applicable Habitat Plan conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant shall submit the Santa Clara Valley Habitat Plan Coverage Screening Form (<https://www.scv-habitatagency.org/DocumentCenter/View/151/Coverage-Screening-Form?bidId=>) to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of all applicable fees prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>.
- **Subsurface Cultural Resources.** If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American Tribal representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall examine the find. The archaeologist in consultation with the Tribal representative shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and 2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of PBCE or the Director's designee, the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.

- **Human Remains.** If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Section 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or their authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:
 - The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
 - The MLD identified fails to make a recommendation; or
 - The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.
- **Soil Erosion/Loss of Topsoil:**
 - All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
 - Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
 - Ditches shall be installed, if necessary, to divert runoff around excavations and graded areas.
- **Paleontological Resources.** If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The project applicant shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of

Planning or Director's designee of the Department of Planning, Building and Code Enforcement.

- **Construction-related water quality.**
 - Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
 - Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
 - All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
 - Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
 - All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.
 - All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
 - Vegetation in disturbed areas shall be replanted as quickly as possible.
 - All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
 - The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
- **Post-construction impacts.**
 - The project shall design and construct low-impact development (LID) stormwater treatment control measures to treat runoff from impervious surfaces.